# Supreme Court of the United States

OCTOBER TERM, 1949

**No. 391**

MARION J. SLOCUM, as General Chairman, Lackawanna Division No. 30 of The Order of Railroad Telegraphers,
*Petitioner,*

vs.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,
*Respondent.*

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK**

## BRIEF FOR THE PETITIONER

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## TABLE OF CONTENTS.



### CASES CITED.

STATUTES.

MISCELLANEOUS.

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### Opinions Below

The Opinion of Justice Personius of the New York State Supreme Court denying petitioner's motion to remove the action to the United States District Court is reported at 183 Misc. 454, 50 N. Y. S. 2d 313.

The opinion of United States District Judge Knight remanding the case to the Supreme Court of Chemung County, New York, is reported in 56 Fed. Supp. 634. Petitioner's motion to dismiss made in the New York State Su-

preme Court after remand, under Rules 112 and 143 of the New York Rules of Civil Practice, was denied by Supreme Court Justice Newman. His opinion is printed at (R. 22).

The opinion of the Appellate Division of the Supreme Court, Third Department, affirming the order of the Supreme Court, denying the motion to dismiss, is reported in 269 App. Div. 467, 57 N. Y. S. 2d 65 (R. 25).

The *Per Curiam* opinion of the same court on affirmance of the judgment, following the trial, is reported in 274 App. Div. 950, 83 N. Y. S. 2d 513 (R. 282).

The opinion of the Court of Appeals of New York (R. 356) is reported in 299 N. Y. 496, 87 N. E. (2d) 532.

## Jurisdiction

The judgment of the Court of Appeals of the State of New York was entered on July 19, 1949 (R. 351). The jurisdiction of this Court rests on Section 1257 (3) of Title 28 of the United States Code.

## Statement of the Case

The petitioner in this case challenges a judgment of the Court of Appeals of the State of New York which affirmed actions of the lower courts of that state in entertaining jurisdiction to determine a controversy concerning the interpretation of collective bargaining agreements entered into pursuant to the provisions of the Railway Labor Act (48 Stat. 1185; 45 U. S. C. A. 151 *et seq.*). One of these agreements was between the respondent and The Order of Railroad Telegraphers, a railroad labor organization national in scope, of which the petitioner is an official; the other agreement was between the respondent and The

Brotherhood of Railway and Steamship Clerks, a similar national railroad labor organization, the General Chairman of which was named as a co-defendant with petitioner, but who is no longer a party to this action. Since the principal questions on this appeal relate to the jurisdiction of state courts in the field of railway labor relations, the facts of the particular dispute which gave rise to the present litigation will be summarized only to the extent necessary to show the exact nature of the controversy presented to the trial court, and its relation to the important questions of constitutional law and public policy here presented.

On February 26, 1944, The Delaware, Lackawanna & Western R. R. Co., respondent, filed a complaint in the Supreme Court of New York, Chemung County, demanding a declaratory judgment declaring the rights, obligations, liabilities and legal relations of respondent and The Order of Railroad Telegraphers and the Brotherhood of Railway and Steamship Clerks, arising under agreements between respondent and each of said organizations of employees (R. 4).

It appeared that respondent entered into an agreement with the telegraphers January 1, 1929 (R. 284), which was amended May 1, 1940 (R. 329). An agreement was entered into by respondent with the clerks on October 1, 1934, (R. 302) and subsequently amended January 1, 1939 (R. 313).

The controversy involved a claim by petitioner's organization (Telegraphers) that certain work being performed by crew-callers in respondent's Elmira Yard fell within the scope rule of the telegraphers' agreement. On the other hand, the clerks' organization maintained that all work performed by said crew-callers came within the scope rule of their agreement. On May 1, 1938, respondent abolished

the positions of three towermen at its "LV" Tower and of three operators at its Elmira Yard "MS" (R. 9). Thereupon, by agreement with the telegraphers, respondent created three positions of "operator towermen" at "LV" Tower and transferred the work of three towermen and three operators, all of which came within the scope rule of the telegraphers' agreement dated January 1, 1929, to the three operator towermen located in the "LV" Tower and to the three clerk-operators located in the Elmira passenger station (R. 6, 9). The latter three positions of clerk-operators were listed in, and the work performed by the three operator-towermen came within, the scope rule of the said telegraphers' agreement (R. 9). At the time the work of said operators was removed from the Elmira Yard to the tower, some of the work attached to the positions in the Yard still remained to be performed. This remaining work was assigned by the respondent to employee members of the clerks' organization (R. 9).

Respondent further alleged that a dispute existed between the telegraphers and the clerks as to whether the work performed by crew-callers came within the scope rule of the respective agreements (R. 11).

Respondent asked for an interpretation of all four agreements with the two organizations involved; asserted that its interpretation favored the clerks' organization; and requested the court to declare that all work performed by crew-callers came within the scope rule of the clerks' agreement (R. 14).

Respondent further alleged upon information and belief, that if it recognized the claim of the telegraphers it would be subjected to a claim by the clerks who would present the same under the Railway Labor Act to the Third Division of the National Railroad Adjustment Board (R. 11). Cor-

responding allegations were made as to assertion and recognition of a claim by the clerks in which event the telegraphers would present their claim under the Railway Labor Act to the Third Division of the Adjustment Board (R. 12). The basis upon which the respondent relied to sustain the jurisdiction of the court to grant declaratory relief is set forth in Paragraph 30 of the complaint, wherein respondent alleged it had no adequate remedy at law, and no adequate remedy before the National Railroad Adjustment Board, since there was no procedure whereby respondent could bring said claims jointly before the Third Division or any Division of the Adjustment Board for determination, or whereby respondent could make both organizations parties thereto, so that both organizations would be bound by any decision of said Third Division (R. 13). Respondent further alleged that the matter in dispute had not been submitted to any court, board or tribunal for determination (R. 13).

The action was commenced in the Supreme Court of the State of New York by the service of the summons and verified complaint on the petitioner on March 3, 1944, and on the general chairman of the clerks on March 10, 1944. Petitioner immediately filed a petition in the State Supreme Court for removal of the action to the United States District Court at Buffalo. Such application was denied by Justice Personius.

Thereafter, a petition and bond for removal was submitted to the Honorable John Knight, United States District Judge for the Western District of New York, and approved by him, and a certified copy of the record was filed in the District Court on April 12, 1944. Thereupon, the petitioner moved in said court to dismiss the action for lack of jurisdiction.

Respondent appearing specially on April 25, 1944, made a cross motion to remand the case to the state court. The petitioner's motion to dismiss was denied and the respondent's motion to remand to the state court was granted.

After remand, petitioner filed a verified answer and moved to dismiss in the state court. The grounds of the motion to dismiss on argument were the same as those set forth in the motion to dismiss filed in the United States District Court. The motion was denied by Supreme Court Justice Newman, on the authority of *Moore v. Illinois Central R. R.*, 312 U. S. 630 (R. 23). The Appellate Division of the Supreme Court, in affirming the denial of the motion to dismiss, relied upon the same case, stating:

> "A real controversy exists under the contracts. The Courts of this state furnish a more convenient forum for the trial of the issues than the statutory Board which functions in a distant state." (R. 26.)

Petitioner in his answer alleged he was progressing his claims against respondent pursuant to the provisions of the Railway Labor Act, as amended, and that the grievances had been processed, pursuant to the Act, to the chief operating officer of the respondent; that the chief operating officer had not made a determination of said grievances pursuant to the said Act, and that it was the intention of The Order of Railroad Telegraphers to progress said grievance pursuant to the Railway Labor Act to a conclusion (R. 19). Petitioner denied the allegations in paragraph 30 of the complaint with respect to the claimed inadequacy of the remedy before the National Railroad Adjustment Board. The verified answer filed by the clerks denied the same allegations (R. 16). Both answers demanded dismissal of respondent's complaint (R. 18, 21).

At the opening of the trial, counsel for petitioner and counsel for the clerks joined in a renewed attack on the

jurisdiction of the court preliminary to the trial on the merits (R. 34, 36). Again these motions were denied.

The lengthy record was devoted principally to conflicting testimony with respect to the duties performed by the crew-clerks, and the historical, customary and long established practice of telegraphers in performing such work as compared to clerks. This testimony is stated briefly for the light which it sheds upon the precise nature of the jurisdictional controversy involving the two organizations before the trial court which, as will be demonstrated later, was not really justiciable at all.

It appeared that the jobs of three operators in the respondent's yard office at Elmira, were abolished on May 1, 1938. These jobs had always been held by telegraphers (R. 44, 50). The duties of the operators were then distributed among clerk operators at Elmira ticket office, and the operator-levermen at Elmira tower; and the remaining communication work assigned to the crew-clerks (not covered by the schedule), who remained in the yard office formerly occupied by the operators (R. 73, 157).

The controversy centered about the work newly assigned the crew-clerks, who were and still are members of clerks' organization. The respondent's testimony disclosed the existence of a jurisdictional dispute between the defendant organizations (R. 67, 93), and that changes made in the agreements between the organizations of employees and the respondent were accomplished arbitrarily and without notice by respondent to either of the organizations, as required by Sec. 6 of the Railway Labor Act (R. 94).

While the action was in form an action to interpret four written agreements it developed upon the trial that no decision could be made on any such basis. The scope rule of none of the agreements defined the duties of the posi-

tions listed therein, and no court could possibly have interpreted these agreements to determine the controversy. It thus appeared that the true nature of the controversy was that of a jurisdictional dispute, *i. e.*, a dispute between two labor organizations as to the representation of particular employees performing a variety of duties of a mixed nature. It was clearly demonstrated that substantial clerical duties were performed by these employees (R. 92, 106). On the other hand, it was shown by an overwhelming volume of testimony that the telegraphers had historically represented all employees engaged in any form of communications work, even though the same employees performed incidental clerical work (R. 44), and it was not seriously disputed that a large portion of the crew-clerks' work was in this field (R. 72 *et seq.*). The trial court's decision was apparently based upon the assumption advanced by the respondent in its complaint, that the work done by the crew-clerks could not fall within the scope rules of both agreements. Clearly this was a false assumption, as it was demonstrated that the crew-clerks, in fact, performed duties which had been previously performed by different employees, both telegraphers and clerks, whose positions were specifically listed in both agreements. In view of the undisputed testimony on this subject, the only rational explanation of the trial justice's decision is that he determined that the crew-clerks did more clerical work than communications work, and that therefore they should be deemed to be within the clerks' agreement. In other words, the decision did not interpret either agreement because there was no basis for making any legal intrepretation.

It further appeared that the telegraphers' grievance had been regularly presented to the proper official of the carrier in at least *four* separate written communications, and the

statutory procedure of the Railway Labor Act was thereby instituted (R. 261, 264-8). The respondent neglected and refused to pass upon the claim, despite its repeated presentation by letter and in conference, and no decision denying the claim was ever made by respondent prior to the institution of this litigation.

No proof, documentary or otherwise, was submitted by respondent in support of its conclusions alleged in paragraph 30 of the complaint that it had no adequate remedy before the National Railroad Adjustment Board.

Petitioner and the clerks renewed their motions to dismiss the complaint at the conclusion of respondent's case in chief again stressing the primary jurisdiction doctrine (R. 107, 115). The motions were denied (R. 122).

Following petitioner's testimony, the motions to dismiss were renewed and dismissal of the complaint requested on the grounds previously argued to the effect that jurisdiction to decide the dispute over the interpretation of the agreements was vested in the National Railroad Adjustment Board and that the evidence disclosed the existence of a jurisdictional dispute not justiciable by the court (R. 230).

The clerks introduced no testimony and the matter was taken under advisement by the court on August 9, 1945, (R. 230).

The trial court held on March 7th, 1946, that a *bona fide* dispute existed between the respondent and the two organizations of employees as to whether the work of crew-callers came within the terms of the respective agreements; that the respondent had no adequate remedy at law; and that the respondent was entitled to judgment construing the various agreements. The construction adopted was in favor of the

position of the clerks' organization. Findings 28, 41, 43, 44 (R. 238, 240, 241). Conclusions of Law 2, 9, 11, 12 (R. 243, 244, 245); Judgment, Pars. 2, 9, 11, 12 (R. 248-250).

The decision of the Supreme Court was affirmed by the Appellate Division, Third Department, in a brief *Per Curiam* opinion, citing its previous ruling on the motion to dismiss and *Moore v. Illinois Central R. R. Co.*, 312 U. S. 630, (R. 282). The court, in the same opinion, stated that this Court in *Order of Railway Conductors v. Pitney*, 326 U. S. 561, "did not overrule the holding of the Moore case" (R. 283).

Pursuant to New York practice, application was then made to the Appellate Division for leave to appeal to the Court of Appeals. This application was denied.

Petitioner then applied to the Court of Appeals for leave, and permission was granted by that court (R. 283). The Court of Appeals affirmed, by a divided court, Desmond and Fuld, JJ. dissenting (R. 356). The court, following a synoptic discussion of the "General Purposes" of the Railway Labor Act, held that "until the *Moore* case is limited to its facts or overruled, we should follow it, as have the Courts below." In referring to the *Pitney* case, the Court of Appeals said:

> "That case not only does not support appellant's position, but on the question of the jurisdiction of the courts, it is clearly to the contrary" (R. 361).

In the course of the opinion, the Court of Appeals further stated:

> "Rather this is a case where there is at most concurrent jurisdiction by the Adjustment Board and the State Supreme Court, over the parties and the subject matter, and before any proceeding has been instituted before the Board, the plaintiff has seen fit to ask merely

for an interpretation of the agreements between the parties in an action for a declaratory judgment in the Supreme Court" (R. 364, 365).

Finally, the court quoted with approval the reasons advanced by the trial justice and the Appellate Division in denying petitioner's motion to dismiss:

> "The controversy arose out of work performed at Elmira and there seems to be no reason why the plaintiff should be compelled to go to the National Railroad Adjustment Board at Chicago, with the attendant delays, especially in view of the fact that it is questionable if the relief there afforded is adequate. The condition of the court calendar here, where the controversy arose, is such that the case can be disposed of expeditiously and at the convenience of the respective parties, affording full, adequate and prompt relief.
> "The Appellate Division in affirming that order likewise said (269 App. Div. 469): 'The courts of this State furnish a more convenient forum for the trial of the issues than the statutory board which functions in a distant state. Under such conditions, plaintiff should not be denied the right to litigate here and obtain a judgment declaratory of its obligations under the contracts' " (R. 365, 366).

Judge Desmond, dissenting, was of the opinion that the basic question in the *Pitney* case was exactly the question in the present case, and that this Court in the *Pitney* case had held that under the Railway Labor Act the determinations sought by respondent here are not the business of the courts but of the Railroad Adjustment Board. The dissenting opinion concluded by holding the *Moore* case inapplicable, stating that if this Court in the *Pitney* case had determined that the *Pitney* situation was the same as the *Moore* situation, except for the element of bankruptcy in the *Pitney* case, this Court would have said so and not let the *Moore* case go unmentioned in the *Pitney* opinion (R. 366, 369).

## Specification of Errors

Petitioner specifies the following errors in the judgment to be reviewed:

1. The Court of Appeals erred in affirming the judgment of the courts below, since the Supreme Court of the State of New York lacked jurisdiction to enter a declaratory judgment interpreting collective bargaining agreements promulgated under the Railway Labor Act, before the carrier had exhausted the administrative remedies provided in the Act.

2. The Court of Appeals erred in failing to follow the public policy of the Railway Labor Act as determined by this Court in *Order of Railway Conductors v. Pitney*, 326 U. S. 561, which required the state courts to refuse jurisdiction in the present case.

3. The Court of Appeals erred in its judgment that there is concurrent jurisdiction in the National Railroad Adjustment Board and the State Supreme Court over the parties and the subject matter.

4. The Court of Appeals erred in its judgment that the courts of New York afforded a more convenient forum for the trial of the issues than the National Railroad Adjustment Board in Chicago.

5. The Court of Appeals erred in its judgment that the procedure under the Railway Labor Act was inadequate to bind all of the parties.

## Statutes Involved

The pertinent provisions of the Railway Labor Act (48 Stat. 1185, 45 U. S. C. Sec. 151 *et seq.*) are set forth in an appendix to this brief.

The applicable provisions of the New York Civil Practice Act and the Rules of Civil Practice are as follows:

> C. P. A. "§ 473. Declaratory judgments. The supreme court shall have power in any action or proceeding to declare rights and other legal relations on request for such declaration whether or not further relief is or could be claimed, and such declaration shall have the force of a final judgment. Such provisions shall be made by rules as may be necessary and proper to carry into effect the provisions of this section."

Rule 212 of the Rules of Civil Practice:

> "Jurisdiction discretionary. If, in the opinion of the court, the parties should be left to relief by existing forms of actions, or for other reasons, it may decline to pronounce a declaratory judgment stating the grounds on which its discretion is so exercised."

## Summary of the Argument

Petitioner's argument may be summarized as follows:

1. The Railway Labor Act was intended by Congress to set up an exclusive procedure for the prompt determination of disputes between carriers and organizations of employees growing out of the interpretation of collective bargaining agreements. Since the paramount authority of the federal government, acting under the commerce clause of the constitution, has preempted this field, the jurisdiction of the state courts in such matters has been terminated.

2. State courts are bound by the interpretation of a federal statute by the Supreme Court of the United States. This Court has held in the *Pitney* case that the public policy embodied in the Railway Labor Act prevents the exercise of jurisdiction by the courts to decide disputes and interpret collective bargaining agreements, under the

circumstances here presented. That public policy is inherent in the Act as construed by this Court, and the Court of Appeals was not at liberty to hold otherwise.

3. The administrative remedy, provided by federal statute, was specifically designed to resolve disputes such as the one here presented before an expert tribunal, particularly versed in railroad labor matters. The statutory procedure had already been set in motion by the petitioner before the present litigation was instituted by respondent, and a full and adequate remedy was therefore available to the parties. Under these circumstances, it was a mistake of law for the state courts to deny the motions to dismiss for want of jurisdiction.

## Argument

### I

### The Railway Labor Act precludes the exercise of jurisdiction by state courts to interpret collective bargaining agreements in disputes between carriers and labor organizations.

The validity of the Railway Labor Act, which established tribunals and procedures for the prompt determination of labor disputes involving interstate rail carriers, is beyond dispute. This Court has repeatedly upheld these provisions under the constitutional power of Congress to regulate interstate commerce.

*Texas & N. O. R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548;

*Virginian Ry. Co. v. System Federation*, 300 U. S. 515, 553.

One of the main purposes of the 1934 amendments to the Act of 1926 was to provide a more effective process of settlement. *Elgin J. & E. R. Co. v. Burley*, 325 U. S. 711, 725, 726. This appears clearly both from the structure and language of the amendments and from a consideration of the background of their enactment.

The 1934 amendments incorporated in the present Act were designed to provide a general and inclusive plan for the settlement of *all* railway labor disputes, to refer to the specific language of Sec. 2, "General Purposes." The aim was not to dispense with voluntary agreements and settlements between disputing parties, but rather to provide agencies and tribunals for resolving disputes which could not be otherwise determined without prolonged industrial strife. A most important objective of the 1934 amendments was that of attaining uniformity in the interpretation and administration of the law with respect to collective bargaining agreements and the respective rights of carriers and employees.[1] This uniformity was intended to extend to the promulgation of agreements, the creation of tribunals for interpretation of such agreements, and the procedure for the resolution of controversies arising under them. Separate tribunals were therefore provided which, it was expected, would be peculiarily fitted to deal with the specific controversies committed to their respective jurisdictions. The plan of the Act in this respect is as follows:

The National Railroad Adjustment Board has general jurisdiction over disputes growing out of grievances, or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions. The Board consists of thirty-six members, eighteen selected by the carriers

[1] Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L. J. 567 (1937).

and eighteen selected by labor organizations of the employees, national in scope, organized in accordance with the provisions of the Act. The Board is divided into four Divisions, and it is important to note that a single Division, viz., the Third Division, has jurisdiction over both telegraphers and clerical employees (Sec. 3 (h)).

The interpretation of collective bargaining agreements promulgated under the Railway Labor Act by an agency especially competent and specifically designated to deal with this subject provides stability to labor relations. This was a primary objective of Congress in enacting the amendments, Section 153 *et seq.*, to the Railway Labor Act in 1934.

Section 153, First (i), of the Act provides that disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions,

> "* * * *shall* be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the dispute may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board * * *." (Italics supplied.)

The Act thus specifies a complete procedure for the handling of claims of this type. The first step in the administrative procedure is the referral of the complaint through normal channels to the chief operating officer of the carrier (Sec. 3 (i)), that being the exact procedure initiated by the petitioner before the commencement of the present action (R. 33-4, 261-273). If adjustment is not reached in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board, "with a full statement of the facts and all

supporting data bearing upon the disputes." Awards of the Adjustment Board may be enforced by appropriate action in the United States District Court (Sec. 3 (p)).

The second major tribunal created by the Act is the National Mediation Board (Secs. 4, 6). A principal function of this Board is the mediation, and, if necessary, the determination of representation cases.

It may be pointed out in passing that it is frequently difficult to determine exactly which type of controversy is involved in a particular case, since a single dispute (such as the one here considered) may involve questions of interpretation or application of contracts, as well as questions of policy with respect to representation. This Court has flatly held that the latter questions are not within the jurisdiction of any court. *General Committee, etc. v. M. K. T. R. Co.*, 320 U. S. 323.

Applying the usual rules of interpretation applied to federal legislation under the commerce clause by this Court, it would seem clear that the jurisdiction of both statutory administrative tribunals was intended to be exclusive. The uniform course of decision in this Court establishes the principle that when Congress "occupies the field" in an area of federal jurisdiction, the authority of the state legislative and judicial bodies is terminated. This familiar doctrine is particularly applicable to the field of labor relations.

*Bethlehem Steel Co. v. N. Y. State Labor Rel. Bd.*, 330 U. S. 767;

*LaCrosse Telephone Co. v. Wisconsin Employment Rel. Bd.*, 336 U. S. 18.

In the *Bethlehem* case, this Court at page 772, said:

"It long has been the rule that exclusion of state action may be implied from the nature of the legislation

> and the subject matter although express declaration of such result is wanting."

The latest expression by this Court on this general subject may be found in *California v. Zook*, 336 U. S. 725. There the question was as to the right of a state to legislate in a field occupied by Congress. The general test formulated was this:

> "But whether Congress has or has not expressed itself, the fundamental inquiry, broadly stated, is the same: does the State action conflict with national policy?"

It seems clear that the same test must be applied when the problem involved is one of possible conflict in the area of federal and state adjudication. It is self-evident that the exercise of jurisdiction by the state courts in railway labor disputes does in fact conflict with the national policy as stated by Congress in the "General Purposes" of the Act.

Before proceeding to a discussion of the particular case relied upon by the respondent and by the courts below as establishing a contrary rule (*Moore v. Illinois Central R. Co.*, 312 U. S. 650), we call attention to a few of the factors which seem to indicate that Congress certainly intended the jurisdiction conferred upon these tribunals, to be exclusive in a controversy such as is here considered.

In the first place, the history of the Act, and the purposes expressed in Sec. 2 seem to be conclusive on this subject. As was said by this Court in *General Committee, etc., v. M. K. T. R. Co., supra*, at page 337, in considering whether one particular type of controversy cognizable under the Act could be determined in a court of law:

> "In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied.

> Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals."

To the same effect:

*General Committee v. Southern Pacific R. Co.*, 320 U. S. 338;

*Switchmen's Union v. National Mediation Board*, 320 U. S. 297.

A further reference to the legislative history of the 1934 Act will demonstrate the reasons for this conclusion. At hearings before the House Committee on Interstate and Foreign Commerce on H. R. 6750, 73d Cong. 2d Sess., p. 47, 48, Mr. Joseph B. Eastman, Federal Coordinator of Transportation, advanced the desirability of "a more uniform settlement of these disputes." He stated:

> "I also have the feeling that the national board will have a very distinct advantage, because it can establish certain precedents of general application which should furnish a guide for deciding cases locally. As a matter of fact the same rules are now interpreted in many different ways throughout the country, and that is one reason why grievances which arise remain unsettled, because there is disagreement as to what the same language means and a great variety of interpretations. If we had one board, nation-wide, setting precedents in these matters, I think the tendency would be to establish guides which would enable a great many of the issues to be settled at home."

* * *

The same witness further testified:

> "Furthermore, I have the feeling that it is very desirable to have a more uniform settlement of these disputes. These matters that we are now dealing with are grievances. They are not the basic rates of pay or the basic working rules and the interpretation of those rules or grievances which men have, and it doesn't seem

> to me that it is necessary to have any number of different ways of disposing of those all over the country, and that the national board could soon set certain precedents which would discourage and limit the number of such disputes which would arise, because it would be perfectly clear what the outcome would be if they were referred to the national board."

A reference to some of the practical considerations which must have influenced the passage of this legislation will buttress the view that the remedies provided were intended to be exclusive. Congress knew that uniformity in applying labor agreements was more likely to be achieved if all disputes were to be submitted to a national board rather than to state or federal courts, and the establishment of the Adjustment Board in itself manifests a congressional intention that *all* disputes such as existed between respondent and petitioner, be submitted to it rather than to the courts.

The amendments to the Act created a federal right in petitioner to select the one forum established for the prompt disposition of any dispute over which the Adjustment Board had jurisdiction. The petitioner chose to exercise that right and the present dispute was handled under the mandatory provisions of Section 153(i) "• • • up to and including the chief operating officer of the carrier designated to handle such disputes • • •."

There would be little incentive to progress a case under these provisions should the opinion of the Court of Appeals be allowed to stand. The chances of settlement on the property would diminish and disputes would remain in a stagnant condition; eventually industrial peace and uninterrupted transportation service would be threatened.

Should the decision of the court below stand, it will offer the respondent and other carriers the opportunity to by-

pass the Adjustment Board and seek interpretations of collective bargaining agreements between a carrier and the following overlapping organizations of employees—the Engineers and the Firemen and Enginemen; the Trainmen and the Conductors; the Trainmen and the Switchmen; the Telegraphers and the Clerks; the Telegraphers and the Dispatchers, and between numerous shop-craft organizations of employees. Such action would result in compulsory acceptance of judicial decisions, and would effect a change in the Act not intended by the carriers and the organizations of employees who jointly appealed to Congress in behalf of the principles of the 1934 amendments. The fact that no reference was made to judicial remedies by the representatives of either the carriers or the organizations of employees at the hearings on the proposed amendments, suggests that the courts were not intended to play an important role in resolving this type of dispute. It follows that both sides engaging in the legislative discussion recognized that some other method of settling such disputes was essential.

It is also certain that uniformity of interpretation of the language contained in these agreements can only be attained by adherence to the Adjustment Board procedure. The factual questions presented are invariably intricate and technical, requiring the consideration of men informed by experience.

The precedents and factors just considered would seem to demonstrate conclusively that concurrent jurisdiction by the courts and the administrative tribunals in cases of this kind is contrary to the legislative intent as interpreted by this Court in a variety of similar cases. Does the holding of this Court in *Moore v. Illinois Central R. Co.*, 312 U. S. 630, require a different result in the present case?

The courts below apparently reached that conclusion in holding that the rule stated in the *Moore* case was intended by this Court to apply to all types of controversies which might arise under agreements promulgated under the Railway Labor Act. However, later decisions of this Court, in the same field, have made it abundantly clear that the doctrine of the *Moore* case will be limited to the particular type of controversy there considered, viz., a "common law action to recover wages," as it was described in *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 342.

No case in this Court can be cited in which either a carrier or labor organization has been permitted to seek a judicial interpretation of a collective bargaining agreement before exhausting the administrative processes of the Railway Labor Act.

On the contrary, in other cases involving controversies under the Railway Labor Act, this Court has regularly remanded the litigants to the administrative remedies under the Act, either as a matter of law, or in the exercise of sound judicial discretion. The most informative cases in this respect are *Gen. Comm. of Adj. v. Missouri, Kansas, Texas R. Co.*, 320 U. S. 323, and *Order of Railway Conductors v. Pitney*, 326 U. S. 561.

The *M. K. T.* case involved a factual situation strikingly similar to the case at bar. The dispute there was as to the proper representation of employees of the carrier who worked sometimes as firemen and sometimes as engineers. The engineers brought an action in the United States District Court seeking a declaratory judgment that an agreement entered into by the carrier with the firemen was in violation of the Railway Labor Act and that they should be declared the sole representative of all locomotive engineers

with the exclusive right to bargain for them pursuant to the collective bargaining agreement that they had entered into.

This Court held that the provisions of the Railway Labor Act conferred exclusive jurisdiction of that type of controversy upon the tribunals set up by the Act, in that case the National Mediation Board. We quote from the opinion at pages 327, 328:

> "But we do not intimate an opinion concerning them. For we are of the view that the District Court was without power to resolve the controversy.
>
> "It is our view that the issues tendered by the present litigation are not justiciable—that is to say that Congress by this Act has foreclosed resort to the courts for enforcement of the claims asserted by the parties."

* * *

At page 336:

> "It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. * * * However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them. To the contrary, it fashioned an administrative remedy and left that group of disputes to the National Mediation Board. If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive. If a narrower view of § 2, Ninth, is taken, it is difficult to believe that Congress saved some jurisdictional disputes for the Mediation Board and sent the parties into the federal courts to resolve the others. Rather the conclusion is irresistible that Congress carved out of the field of conciliation, mediation and arbitration only the select list of problems which it was ready to place in the adjudicatory channel. All else it left to those voluntary processes whose use Congress had long encouraged to protect these arteries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability."

While the case just cited involved a controversy which was held to be within the jurisdiction of the National Mediation Board rather than the Railroad Adjustment Board, the reasoning of the Court applies with like force to any dispute between a carrier and a railroad labor organization arising out of a collective bargaining agreement and also having to do with a question of representation, commonly called a jurisdictional dispute. In point of fact, the range of possible controversies arising under the Railway Labor Act may be thought of as a spectrum running from the common law damage action brought by an individual employee as in the *Moore* case, to the most intricate jurisdictional dispute involving primarily questions of history and policy such, for example, as in *General Committee of Adjustment v. Southern Pacific*, 320 U. S. 338.

The *M. K. T.* case and the present case fall midway in the spectrum. Since the substance of the controversy is almost identical in the two cases, it is submitted that the present case, like *M. K. T.*, is one over which the courts are denied jurisdiction.

The nature of the testimony produced upon the trial buttresses this view. When the carrier's case was commenced, it became immediately apparent that this was no action to obtain a legal interpretation of a written contract, since the contract involved was silent on the precise subject of controversy. In such circumstances, history, past practices and long established policy rather than the letter of the written contract must decide the controversy. But precisely this type of controversy has been committed by Congress to expert tribunals especially created for this purpose, and the *M. K. T.* case makes it clear that this Court will enforce the Congressional intent.

The limited effect of the *Moore* case is made very clear by the decision in the *Pitney* case. There, the plaintiff organization representing certain employees of a bankrupt railroad, sought to have the Federal District Court issue an injunction restraining an alleged violation of the Railway Labor Act. In order to determine the merits of the controversy, it was necessary for the court to interpret the collective bargaining agreements between the carrier and two organizations, as here. The district court interpreted the agreements, and dismissed the petition on the merits. On appeal, the circuit court held that the petition should have been dismissed on jurisdictional grounds, because the remedies of the Railway Labor Act for the settlement of such disputes were exclusive. This Court upheld the decision of the circuit court with respect to denying jurisdiction to the district court to pass upon the question presented. This Court's opinion, 326 U. S. 561, 566, 567, that the district court should not have interpreted the contracts for purposes of finally adjudicating the dispute is applicable and controlling here:

> "• • • We have seen that in order to reach a final decision on that question the court first had to interpret the terms of O. R. C.'s collective bargaining agreements. The record shows, however, that interpretation of these contracts involves more than the mere construction of a 'document' in terms of the ordinary meaning of words and their position. See Brown Lumber Co. v. L. & N. R. Co., 299 U. S. 393, 396, 57 S. Ct. 265, 266, 81 L. Ed. 301; Great Northern Ry. Co. v. Merchants Elevator Co., 259 U. S. 285, 291, 42 S. Ct. 477, 479, 66 L. Ed. 943. For O. R. C.'s agreements with the railroad must be read in the light of others between the railroad and B. R. T. And since all parties seek to support their particular interpretation of these agreements by evidence as to usage, practice and custom that too must be taken into account and properly understood. The factual question is intricate and technical.

> An agency especially competent and specifically designated to deal with it has been created by Congress. Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue."

It is apparent from the two cases just cited that this Court intends to limit the doctrine of the *Moore* case to its precise facts, namely, a common-law action to recover wages brought by an employee against a carrier where the questions involved are primarily legal in nature and require no particularly expert knowledge or background. So far as counsel are aware, this Court has never permitted an action in any court of law between a carrier and a railroad labor organization for the interpretation of a collective bargaining agreement, or for the resolution of a jurisdictional dispute or other controversy arising in connection with such agreements.

Since the decisions in the cases just cited, the federal courts have regularly refused jurisdiction of such disputes as a matter of law, and have remitted the parties to the appropriate administrative procedure. See for example: *Missouri, Kansas, Texas R. Co. v. Randolph*, 164 F. 2d 4, cert. den. 334 U. S. 818; *The Order of Railroad Telegraphers v. New Orleans, Texas & Mexico Ry. Co.*, 156 F. 2d 1, cert. den. 329 U. S. 758; *Brotherhood of Railroad Trainmen v. Texas and Pacific Ry. Co.*, 159 F. 2d 822, cert. den. 332 U. S. 760; *Illinois Central R. Co. v. Brotherhood of Railroad Trainmen, et al.*, 83 F. Supp. 930; and the unreported decisions of *Atlantic Coast Line R. R. Co. v. Brotherhood of Railroad Trainmen*, U. S. D. C., So. Dist. of Florida, March 30, 1948, and *Seaboard Airline R. R. Co. v. Brotherhood of Railroad Trainmen, et al.*, U. S. D. C., No. Dist. of Alabama, March 25, 1949.

Nowhere in the Railway Labor Act or its amendments is any jurisdiction conferred on any court involving any matter which may be the subject of action under the Act *except* jurisdiction on "the District Court of the United States" to hear an application for enforcement of an award, Sec. 3 (p.) and jurisdiction to impeach an award rendered by a board of arbitration under Sec. 9 of the Act. When Congress provided for judicial action in these particular cases, and in Sec. 2 of the same Act omitted any such provisions as to further jurisdiction, concurrent or otherwise, by any court, "it drew a plain line of distinction." *Switchmen's Union of North America v. National Mediation Board, et al.*, 320 U. S. 297, 306.

## II

## State courts are bound to follow the public policy of a Federal statute as interpreted by this Court.

The point to be discussed is summarized in the following excerpts from Judge Desmond's dissenting opinion in the Court of Appeals (R. 366, 367):

> "The basic question in the Pitney case was exactly the question here, and the Supreme Court said in so many words that the United States District Court should not have interpreted the labor agreements for the purposes of adjudicating the dispute between the unions and the railroad, but should have left all that to the Board. The Supreme Court pointed out, 326 U. S. 566, that in order to decide that basic question, the court would have to interpret the collective bargaining agreements in dispute, and that such interpretation involved more than the mere construction of a document but had to be made in the light of other agreements and in the light of usage, practice and custom.
>
> * * *

"In the case we have before us, the trial court granted no injunction or other relief—its judgment is nothing more or less than a declaration as to the meaning of these collective bargaining agreements and their application to the facts. In other words, the trial court did, here, exactly what the Supreme Court said it was improper for any court to do: Take unto itself a function reserved by Congress to the Adjustment Board. It does not seem to me to make any great difference whether we label this 'want of jurisdiction' or 'abuse of discretion.' Whatever be the appropriate label, this declaratory judgment cannot, under the rule of the Pitney case, stand, and we are just as much bound to reverse for this kind of abuse of discretion (see Colson v. Pelgram, 259 N. Y., 370, 377) as for an absolute lack of jurisdiction."

Judge Learned Hand in *Amey v. Colebrooke Guaranty Savings Bank*, 92 F. 2d 62, has put the matter this way:

"Courts do not always exert themselves to the full, or direct parties to all that they can effectively compel, and such forbearance is sometimes called lack of 'jurisdiction.'"

It may be also noted that in failing to follow the exact precedent of the *Pitney* case, the Court of Appeals departed from its own long-established rule of judicial policy:

"But on a question of statutory construction of the act of Congress which has been determined by the Supreme Court of the United States, subsequently arising in this court, we should feel bound to adopt and follow the construction of the tribunal on the principle of comity, although in a case where the ultimate jurisdiction is vested in this court. This principle is especially important to be observed in such a case, in view of the relation between the Federal and state courts, not exercising, in all cases, a co-ordinate jurisdiction, but engaged in the administration of justice to a great extent between persons who are citizens both of a state and of the United States. The decisions of the tribunals of a state as to the true construction of the statutes of its own sovereignty are followed by the Federal courts,

and it would be most unseemly and produce great confusion if state courts should refuse to adopt the construction of the Supreme Court of the United States, of Federal statutes."

*Yorke v. Conde*, 147 N. Y. 486; writ of error dismissed, 168 U. S. 642.

So here, this Court has construed a federal statute. It has found, inherent in the statute, a legislative intent to confer exclusive primary jurisdiction on a newly created administrative tribunal in exactly the type of case here presented. In the face of that ruling, the New York Court of Appeals has held that no such policy inheres in the statute and that it is free to determine the question of jurisdiction in the exercise of its own judicial discretion. Such a holding involves a novel and far-reaching modification of the traditional concept of the relationship between the federal and state judicial systems.

We may now consider whether any special circumstances, revealed in the pleadings or on the trial, justified the Court of Appeals in approving retention of jurisdiction of this particular case.

**(1) Adequacy of the administrative remedy.**

The present controversy is almost a prototype of the kind of case that is heard by the Railroad Adjustment Board every day. This tribunal is recognized by carriers and labor unions alike as the appropriate forum for the prompt and expert settlement of such controversies. The respondent itself is no stranger to this tribunal. The Twelfth annual report of the National Mediation Board shows that the Delaware, Lackawanna and Western Railroad Company was a party to seventeen cases before the Adjustment Board in the year 1945-46; the Thirteenth annual report shows that it participated in twenty-six such

cases in 1946-47; the Fourteenth annual report shows it appearing in seventeen cases in 1947-48; and the Fifteenth annual report shows it appearing in thirty-six cases in 1948-1949. The same reports show that the respondent has appeared in ninety-six separate cases before the Third Division of this Board during the past seven years. If this carrier has now decided that the administrative remedy is slow, uncertain and unreliable, or that the distance between Elmira and Chicago is prohibitive (R. 365), its discovery of these defects, which it now urges with such vigor, has been belated.

The respondent, and the courts below, made much of the supposed speed with which matters of this kind could be disposed of in the state courts as compared with the Railroad Adjustment Board. A glance at the history of this "hoary litigation" (Cf. *The Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 342) is the best answer to this contention. The case was started in 1944, after five years of protracted delay on the part of the carrier in making the necessary determination which would have permitted petitioner's organization to invoke the administrative remedy, and another six years have now passed without an end to the litigation.

On the other hand, the normal procedure before the Third Division of the National Railroad Adjustment Board is most expeditious (See Fifteenth Annual Report of the National Mediation Board). It is abundantly clear that if the carrier had complied with its statutory duty by deciding the grievances promptly, the present controversy would have been promptly and long since finally determined by the Third Division of the Adjustment Board.

As to the comparative advantages of the two procedures, the record speaks for itself on this question. The testimony

is replete with technical railroad jargon, some of which was apparently unintelligible even to the experienced trial counsel (See for example R. 95, 102-104). Without reflecting on the learned trial court, it may be assumed that he shared some of the same confusion.

On the other hand, the Railroad Adjustment Board is made up exclusively of practical railroad men drawn equally from management and labor. These men are informed by experience and have a complete familiarity with such controversies, which they hear every day. They need no glossary to guide them through the mazes of railroad shorthand. In such a case, a pinch of experience is worth a pound of logic.

The considerations of public policy which found expression in the congressional creation of these highly specialized tribunals under the Railway Labor Act have been well summarized by the Circuit Court of Appeals for the District of Columbia (per Rutledge, J.) in *Washington Terminal Company v. Boswell*, 124 F. 2d 235, 241, aff'd by a divided Court, 319 U. S. 732. We quote from Judge Rutledge's opinion below:

> "The whole adjustment procedure up to the point of award, findings and order by the Board, appears to be constructed upon the idea that it is not the business of lawyers, but is the business of railroad men, workers and managers alike. That does not make their findings and decisions less probative; rather it should make them more so. They know the language, functions and purposes of railroads and of their collective agreements. Their judgment is informed by experience in negotiating and administering these contracts. Because of this they, perhaps better than lawyers, are qualified to interpret and apply them."

Similar considerations have impelled this Court to establish a comparable rule of judicial forbearance, both

state and federal, in matters arising under the Interstate Commerce Act.

*Pennsylvania R. R. Co. v. Sonman Shaft Coal Co.*, 242 U. S. 120, 123-124.

*Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 446-477.

*Pennsylvania R. R. Co. v. Puritan Coal Co.*, 237 U. S. 121, 129.

*Great Northern Railway Co. v. Merchants Elevator Co.*, 259 U. S. 285.

*Loomis v. Lehigh Valley R. R. Co.*, 240 U. S. 43.

*Armour & Co. v. Alton R. Co.*, 312 U. S. 195.

See also:

*Macauley v. Waterman S. S. Corp.*, 327 U. S. 540, 545.

When these considerations are applied to the case at bar, the conclusion seems clear. The reasons which have impelled the federal courts, without exception, to refuse jurisdiction in this type of controversy, do not disappear by reason of the carrier's ingenuity in filing in the state courts.

*A fortiori* is this true when the alternative remedy available is a statutory procedure specifically designed for the exact type of controversy by the paramount legislative authority in the field.

**(2) Respondent's claimed right to interpleader.**

The Court of Appeals held in effect that respondent could maintain this action in the nature of interpleader, the implicit assumption being that it was entitled as a matter of law to a favorable interpretation of its contract with one or the other of the two unions. The court thought that "there is at least some doubt that the procedure under the

Railway Labor Act is adequate to bind all three parties to the action." Its opinion on this matter does not, of course, conclude this Court. A federal right, substantive or procedural, cannot be destroyed by its denial in a state court, even though the denial take the form of a substitute procedure: "This federal right cannot be defeated by the forms of local practice." *Brown v. Western Ry. of Alabama*, 70 S. Ct. 105.

Passing to the substance, respondent's claim has no basis in law. It is obviously not true that the carrier is entitled to a favorable declaration against one of the two labor organizations as a matter of course. On the contrary, the record makes it abundantly clear that the activities performed by the crew-clerks include those primarily performed by telegraphers and secondarily those performed by clerks. Without arguing the merits of the controversy at length, it seems evident that a proper disposition of the controversy would have been to find that each contract covered a particular phase of the work of the crew-clerks.

Even if it be assumed, however, that the carrier was entitled to be relieved of obligation under one or the other contract, this would not justify the ousting of the statutory tribunal, which clearly has jurisdiction over the entire case and all of the parties. In order to reach any such conclusion, it would be necessary to make still a further assumption, namely, that the Railroad Adjustment Board would reach erroneous and inconsistent decisions if the cases were separately presented.

We do not suppose that this Court will give serious consideration to any such supposition. Even its speculative value is eliminated, moreover, by the provisions for complete judicial review accorded by Sec. 3 (p) of the Act.

In enforcement suits, the Board's awards are only *prima facie* evidence of the facts stated, and this has the effect of merely shifting the burden of proof. The remedy thus established by Congress was intended to be legally adequate to protect carriers as well as employees in all situations, either before or after determination by the Adjustment Board.

The procedure is identical with the enforcement of reparation orders of the Interstate Commerce Commission. Section 3 (p) of the Railway Labor Act had its analogue in Sec. 16(2) of Title 49 U. S. C. *Meeker & Co. v. Lehigh Valley R. Co.*, 236 U. S. 412; *Baldwin v. Scott County Milling Co.*, 307 U. S. 478, 482.

**(3) Nature of the Present Controversy.**

We now invite the attention of the Court to certain other features of the present case which make its submission to the statutory tribunal particularly imperative.

In the first place, as we have pointed out, the controversy was not really justiciable, because the issue basically was not the interpretation of an agreement but the settlement of a jurisdictional dispute. Resort was had by both parties to the history and practice of the railroad and the labor organizations, a field of experience in which the Railroad Adjustment Board has certainly a unique competence. The result was an erroneous decision that the crew clerks were really doing work which was primarily clerical rather than relating to communications.

Second, it may be pointed out that the decision will be wholly ineffective as a permanent resolution of the jurisdictional dispute which constitutes the real controversy. As has been shown, exactly the same facts which gave rise to the present controversy might be presented tomorrow in

a slightly different form of proceeding before the National Mediation Board in a representation case. Since the jurisdiction of that Board has been expressly held by this Court to be exclusive (*M. K. T.* case, *supra*), it is certain that the decision which has been rendered here would have no binding effect of any kind in such a case.

An interesting case which indicates the complications which may arise from the assertion of jurisdiction by different tribunals is *The Order of Railroad Telegraphers vs. Railway Express Agency, Inc.*, 321 U. S. 342, 348. In that opinion, Justice Jackson points out that state statutes of limitation are not applicable in the administrative proceedings set up by the Railway Labor Act. If state courts are regularly to entertain jurisdiction in such cases, it is clear, therefore, that conflicting decisions will inevitably be made, and the Congressional purpose of attaining uniform interpretations of collective bargaining agreements promulgated under the Railway Labor Act, will be entirely frustrated.

The New York courts, in common with courts of other jurisdictions, have heretofore consistently refused to entertain an action for a declaratory judgment when a proper proceeding for the determination of the same controversy has already been instituted:

> "When, however, another action by the same parties in which all issues could be determined, is actually pending at the time of the commencement of an action for a declaratory judgment, the court abuses its discretion when it entertains jurisdiction."
>
> *Woollard v. Schaffer Stores Co.*, 272 N. Y. 313.

The rule just stated poses another and insuperable obstacle to the affirmance of this judgment. The Railway Labor Act sets up specific steps in the administrative procedure which is provided for the settlement of contro-

versies such as this. The first step is the presentation of the dispute to the "chief operating officer of the carrier designated to handle such disputes" (Sec. 3 (i)). This step was taken in the present case some five years before the present action was commenced, and during the intervening period the appellant made repeated and unsuccessful efforts to pursue the administrative remedy which had been thus instituted (R. 261-273). The presentation of the claim to the carrier, exactly as it was done in the present case, was a necessary first step in the specified procedure, and the proceeding was therefore pending in the same way that it would have been had the case been in its second phase before the Railroad Adjustment Board. Under these circumstances, it was clearly an abuse of discretion for the state court to usurp jurisdiction of the pending controversy.

## Conclusion

From what has been said, we think it must be evident that the issues on this appeal have a significance far beyond the question of whether the crew-clerks in the Elmira Yards perform telegraphic or clerical work. If the present judgment is affirmed, the Congressional intent, the "General Purposes" of the Act, and the "General Duties" imposed on carriers and employees alike, all designed to provide prompt and orderly settlement of railway labor controversies, will become a mere will-of-the-wisp. The choice of tribunal will then be within the discretion, not of Congress or even of the courts, but of the parties alone. Instead of a uniform body of principles and precedents formulated and administered by a single expert tribunal, we may expect varying decisions and inconsistent administration throughout the forty-eight states. The Railway

Labor Act was not devised to empower courts to exercise concurrent jurisdiction with the several administrative boards it created. A contrary interpretation may well mean the reappearance of wide spread industrial strife, which has historically accompanied extension of judicial intervention in labor matters.

This Court has found in the Act a wise rule of policy which remands carriers and labor organizations alike to the statutory procedures for the settlement of railroad labor controversies. No reason appears why this salutary rule, clearly stated in the *Pitney case*, should not be applied to proceedings in state and federal courts alike. Since the *Pitney* rule has its origin in a federal statute, it is submitted that no grounds exist for holding it inoperative in a state tribunal.

Respectfully submitted,

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# APPENDIX

The pertinent provisions of the Railway Labor Act (48 Stat. 1185, 45 U. S. C., Sec. 151, *et seq.*) are as follows:

## General Purposes

"Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

## General Duties

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * *

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or car-

riers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: PROVIDED, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: AND PROVIDED FURTHER, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

* * *

NATIONAL RAILROAD ADJUSTMENT BOARD.

SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

* * *

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

* * *

Third Division: To have jurisdiction over disputes involving station, tower, and telegraph employees,

train dispatchers; maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

• • •

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the Chief Operating Officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

• • •

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of

arbitrators and shall fix and pay the compensation of such referees.

• • •

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

• • •

NATIONAL MEDIATION BOARD

SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants,

employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. * * * No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

* * *

FUNCTIONS OF MEDIATION BOARD

Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

* * *

Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where

such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.